

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAINON JONES,

Defendant.

CASE NO. 4:17-cr-00524

ORDER
[Resolving Doc. 67]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendant Dainon Jones seeks to amend his 28 U.S.C. § 2255 habeas corpus petition under Fed. R. Civ. P. Rule 15.¹ For the reasons stated below, the Court finds this motion is a successive § 2255 petition and **TRANSFERS** it to the Sixth Circuit for consideration.

The relevant background is recounted in this Court's order denying Jones's 28 U.S.C. § 2255 petition.² In sum, in 2018, Jones pleaded guilty to conspiracy to possess with intent to distribute a controlled substance.³ Jones later filed a § 2255 petition arguing five claims of ineffective assistance of counsel.⁴ On November 25, 2019, this Court denied all grounds for relief in Jones's petition.⁵ The Court denied a certificate of appealability.⁶

Jones now requests leave to amend or supplement his prior § 2255 petition to add a claim of actual innocence. Despite Jones's attempts to stylize his filing as a motion to amend, it is properly construed as a successive § 2255 motion.⁷ Under 28 U.S.C. §

¹ Doc. 67.

² Doc. 62.

³ Doc. 18.

⁴ Doc. 42.

⁵ Doc. 62.

⁶ Doc. 69.

⁷ *Malone v. United States*, No. 1:17CV2290, 2019 WL 7049805, at *2 (N.D. Ohio Dec. 23, 2019) (finding that

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2244(b)(3), the Sixth Circuit must authorize a district court's consideration of a successive habeas motion. Until such permission is granted, the Court lacks jurisdiction to adjudicate Defendant Jones's claims.⁸

Jones also asks the court to "appoint counsel or grant evidentiary hearing" without further argument.⁹ The decision to appoint habeas counsel is within the discretion of the court and required only in the interests of justice or due process.¹⁰ No evidentiary hearing is required because the Court lacks jurisdiction to consider Jones's motion. Defendant has to date demonstrated an ability to argue his respective position *pro se*. Accordingly, the Court declines to appoint counsel.

For the reasons stated above, the Court construes Jones's Rule 15 motion as a successive § 2255 petition and **TRANSFERS** it to the Sixth Circuit for consideration.

IT IS SO ORDERED.

Dated: May 6, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

motion to amend § 2255 motion was successive motion because it sought to assert a new ground for relief and was filed after appealing the denial of his initial habeas petition).

⁸ *Moreland v. Robinson*, 813 F.3d 315, 322 (6th Cir. 2016).

⁹ Doc. 67 at 9.

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